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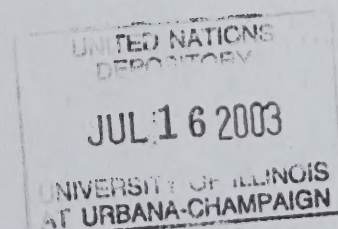
COMMISSION ON HUMAN RIGHTS
Fifty-ninth session
Item 19 of the provisional agenda

**ADVISORY SERVICES AND TECHNICAL COOPERATION
IN THE FIELD OF HUMAN RIGHTS**

SITUATION OF HUMAN RIGHTS IN HAITI

**Report prepared by the independent expert, Mr. Louis Joinet, pursuant to the
Chairperson's statement at the fifty-eighth session of the Commission on
Human Rights under agenda item 19, entitled "Technical cooperation and
the situation of human rights in Haiti"**

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Summary

This report is an account of the first visit to Haiti by the new independent expert, Mr. Louis Joinet, from 22 to 29 September 2002. Following his visit, the independent expert believes that, given the deterioration in the situation since his predecessor's last visit in 2001, the main subjects of concern can be summed up as follows.

First, the security of citizens. The independent expert observed a considerable increase in everyday violence, for example in Cité Soleil, an "outlaw city", according to one of its inhabitants, and in Gonaïves. He believes that the fight against insecurity, and thus the fight against impunity, and the effective implementation of the arms-decommissioning programme should be considered the main priority.

Second, the upsurge in violence against specific targets, which curtails or dispenses altogether with the freedom of opinion and expression that is at the heart of democracy. Three sectors are particularly affected: (1) the press: although the independent expert did not, strictly speaking, observe any censorship in Haiti, he believes that the only choice open to critical journalists is increasingly between self-censorship, exile or death; (2) political activists and their organizations: the fact that it is possible to ransack and burn the headquarters of political organizations with impunity, as the independent expert saw for himself, poses an extremely serious threat to the democratic future of the country; (3) human rights defenders: their leaders are all too often on the receiving end of abuse and anonymous threats.

Third, the deficiencies observed in the operation of the penal system and their consequences, especially for prolonged pre-trial detention. The independent expert finds the situation all the more alarming because of the deplorable detention conditions, which add considerably to the punitive nature of detention.

Fourth, the fate of "the just", who are the prime agents of change. These are women and men who are extremely conscientious, make it a point of honour to be good professionals, show courage and do not bend with the slightest gust of wind. The independent expert met some of them in the prison service and also among justices of the peace, investigating judges and government commissioners. They should be encouraged, supported and promoted, not neutralized, as some of them are at the moment.

The independent expert has, however, noted some progress, such as in the trial for the Carrefour-Feuilles massacre, in which for the first time Haitian police officers were tried and convicted, and in the Raboteau affair (concerning the massacre of large numbers of inhabitants under the coup regime of General Cédras), which ended with the conviction of the perpetrators after a fair trial.

The independent expert has also noted other signs of progress - at least initially - in the arrest of Ronald Camille and the imprisonment, in Gonaïves prison, of two other "untouchables", namely, Guy Louis Jacques, known as "Guy Poupoute", and Amiot Métayer, known as "the

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Cuban" (who, it has been learned, has unfortunately escaped from prison), who are leaders of armed groups that emerged from the so-called popular organizations. Another positive sign is the recent launch of a "pilot court" project in cooperation with the United Nations Development Programme (UNDP).

The independent expert is of the view that a long-term programme of international aid should be planned as part of a renewed technical cooperation programme that targets State bodies or organizations from civil society, as well as professionals who play a decisive role as agents of change.

In this new context, the international community and the Office of the United Nations High Commissioner for Human Rights (OHCHR) should continue with, or resume, technical assistance and cooperation programmes, giving priority to the administration of justice, human rights, the Office of the Ombudsman, the Judicial Training College, the Police Academy and the protection of human rights defenders. To this end, the independent expert proposes that consideration should be given to the establishment, in cooperation with the Government, of an OHCHR office - lightly staffed initially - or, failing that, a specialist UNDP unit.

The independent expert makes further recommendations which could be implemented only if the Haitian authorities and the international community work together.

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Introduction

1. This report provides the Commission on Human Rights with an account of the first visit to Haiti by the new independent expert, from 22 to 29 September 2002.
2. Following the resignation on 15 March 2001 of the independent expert, Mr. Adama Dieng, the Secretary-General appointed Mr. Louis Joinet to succeed him on 25 March 2002.
3. At the fifty-eighth session of the Commission, the Chairperson, speaking on behalf of the Commission under agenda item 19, entitled "Technical cooperation and the situation of human rights in Haiti", stated that "the Commission welcomes the recent appointment of a new independent expert on the situation of human rights in Haiti ... [and] requests the new independent expert to report to the Commission at its fifty-ninth session on developments in the situation of human rights and technical cooperation for human rights in Haiti and decides to continue its consideration of the situation of human rights in Haiti at its fifty-ninth session under the agenda item entitled 'Advisory services and technical cooperation in the field of human rights'".
4. Following his first contacts with the Haitian authorities, the independent expert submitted a communication to the Commission on 23 April 2002 in which he described the spirit and manner in which he intended to fulfil his mandate, in the light of the experience acquired by the United Nations in Haiti in recent years.
5. In this respect, it is important to recall that, following the non-renewal of the mandate of the International Civilian Mission in Haiti (MICIVIH), a joint mission by the United Nations and the Organization of American States (OAS) (1993-2000), and then that of its successor, the International Civilian Support Mission in Haiti (MICAHA) (2000-2001), and, in accordance with the Secretary-General's recommendations, the United Nations Development Programme (UNDP) continued to carry out some of the activities of these missions in the form of a "post-MICAHA" transitional programme. It was against this background and in the framework of cooperation between the Office of the United Nations High Commissioner for Human Rights (OHCHR) and UNDP that the "Assistance to Haiti in the field of human rights" project was prepared in 2001 (HAI/01/AH/18). The project was entrusted to a consultant, Thierry Fagart, former head of the MICIVIH legal department, whose tasks included reporting regularly to OHCHR and to the independent expert and helping the latter to prepare and carry out field trips. The independent expert had two working meetings with the consultant.
6. This report, which follows up the one submitted by Mr. Dieng at the fifty-seventh session of the Commission (E/CN.4/2001/106), was therefore prepared on the basis of information collected and observations made on the spot by both the independent expert during his visit to Haiti and by the consultant during his assessment mission (1 November 2001-30 April 2002), so that much of the period during which Mr. Dieng had not been replaced is covered.
7. During his visit, the independent expert met the Prime Minister, Mr. Yvon Neptune, the Minister for Foreign Affairs, the Minister of Justice and Public Security, in his capacity as minister responsible for justice, the police and the prison authorities, and the Ombudsman and

his staff. Talks were held with people from the legal profession, judges, justices of the peace and investigating judges, government commissioners and lawyers, as well as with the president of the Court of Cassation and the Public Prosecutor. Consultations were held with the widest possible range of organizations from civil society, political parties of all colours, the press and numerous non-governmental organizations (NGOs). The independent expert visited Port-au-Prince, St Marc, Gonaïves and Cap-Haïtien.

8. In addition, the independent expert had talks with the authors of a very well researched field study conducted out with great rigour by the Vera Institute of Justice in July 2000 for UNDP and the Open Society Institute, entitled "Prolonged pre-trial detention in Haiti".

9. The independent expert also had fruitful talks with Mr. Adama Guindo, the resident representative of UNDP (whom he wishes to thank), with the heads of United Nations agencies, with Ambassador David Lee, the special representative in Haiti of the OAS Secretary-General, and with diplomats from the "Friends of Haiti" group.

10. In accordance with the above-mentioned Chairperson's statement, this report describes developments in the situation of human rights in Haiti (chap. I) and technical cooperation for human rights in Haiti (chap. II).

I. DEVELOPMENTS IN THE SITUATION OF HUMAN RIGHTS IN HAITI

11. Despite the gradual deterioration in the human rights situation observed during his visits to Haiti, Mr. Dieng had given the Commission some reasons for hope, given the series of reforms designed to consolidate the rule of law and break with the dictatorial past and given the first trials showing a willingness finally to combat impunity.

A. Good reforms, implemented in part or not at all

12. The main positive initiatives can be summed up as follows:

The establishment in 1995 of the National Truth and Justice Commission, which recommended the establishment of a national commission on reparation for the numerous (several thousands of) victims of the coup d'état on 30 September 1991;

The disbandment of the army and, as a consequence, an end to the administration of justice by military courts;

The establishment of a civilian police force, the Haitian National Police, and, within it, an investigative unit of judicial police;

The establishment of the Office of the Inspector-General of Police, which, thanks to the outstanding work of Inspector-General Luc Joseph Euscher, had begun a far-reaching clean-up operation (with 635 police officers dismissed by the end of 1999, 407 of whom were dismissed after inquiries by the Office of the Inspector-General);

The establishment of the Office of the Ombudsman;

The drafting of a series of bills to reinforce the independence of the judiciary (bills on the Judicial Training College, the Supreme Council of Justice and the rules governing the judiciary) and to combat organized crime (drug-trafficking and money laundering);

The setting up of the Preparatory Commission for the Reform of Law and Justice, which, after sitting from 1997 to 1999, published a report calling for major reforms of the judicial system and proposing that a commission should be set up to reform that system.

13. Nevertheless, when taking stock of these encouraging measures, one cannot fail to observe the gap between words and action. The Commission should consider the following:

Although the National Truth and Justice Commission has indeed been set up, the national commission on reparation for the victims of the 1991 coup d'état has never seen the light of day;

The remarkable effort to clean up the police ended with the resignation in April 2000 of its main proponent, the Inspector-General, whose successor was not appointed until February 2001;

The situation is the same with regard to the Office of the Ombudsman, which lost credibility because it did virtually nothing about serious violations of the human rights of NGO activists, journalists and opponents, and because the post of ombudsman was vacant between 8 June 2001 and 31 July 2002;

The bills provided for in the Constitution and designed finally to give the Judicial Training College, the Supreme Council of Justice and the judiciary a legal status that would give them greater authority and independence are still on the drawing board, as is the project to set up a preparatory commission for the reform of law and justice.

B. The fight against impunity: losing momentum or at a standstill?

1. Reasons for hope ...

14. Some major initiatives at the judicial level were seen by the international community as marking the beginnings of a real willingness to combat impunity. In the following cases, for example, there was an attempt to enforce the law:

The Carrefour-Feuilles district trial, in which for the first time Haitian police officers were tried and convicted for the murder of 11 young Haitians, although the punishments were regrettably lenient;

The Raboteau case (concerning the massacre of many inhabitants under the coup regime of General Cédras), at the end of which, after a fair trial, the perpetrators were sentenced to between four years' imprisonment and life imprisonment with hard labour;

The arrest on 23 March 2002 of Ronald Camille on suspicion of murdering Jean Fitzner outside Parliament on 20 September 2001, an act for which he had publicly claimed responsibility without being taken to task. His arrest sends an especially strong signal because it took place when he arrived at the airport in Port-au-Prince at the head of a group of members of popular organizations to greet President Aristide, who was returning from Monterrey, Mexico, after attending the International Conference on Financing for Development.

15. The government commissioner for Port-au-Prince presented the arrest of Ronald Camille as a first step towards the execution of a number of old arrest warrants in the fight against impunity.

16. Mention should also be made of the imprisonment, in Gonaïves prison, of two other "untouchables", namely, Guy Louis Jacques, known as "Guy Poupoute", and Amiot Métayer, known as "the Cuban", two leaders of armed groups that emerged from popular organizations.

2. ... but hopes largely dashed by increasingly blatant cases of impunity

17. After considering the judicial consequences of the above-mentioned cases of Carrefour-Feuilles and Ronald Camille, the Commission can assess the "developments in the situation of human rights", to use the wording from the Chairperson's statement, in the light of a series of events that took place after the last visit by the previous independent expert, Mr. Adama Dieng.

18. These events show how a "State of impunity" - to use the phrase of a somewhat disillusioned judge - is gradually corrupting the "State governed by the rule of law" established with such difficulty after decades of dictatorship, thanks to the efforts of the Haitian people and international cooperation.

Events occurring in the provinces between 21 March and 29 November 2001

19. Acts of intimidation, some of which were fatal, were carried out against activists and at the offices of opposition political organizations. The events in the following towns can be singled out:

Hinche (21 March 2001): armed groups (led by the mayor, according to some witnesses) intervene to stop a march organized by the Mouvement des Paysans de Papaye;

Les Cayes (31 March 2001): stone-throwers attack the premises where a meeting organized by Convergence démocratique is being held, forcing the participants to end the meeting;

Les Cayes (21 May 2001): another meeting of Convergence démocratique has to be called off after threats are made on the spot;

Marigot (18 November 2001): two armed civilians are brought by the town's mayor into a meeting held by Mr. Edgar Leblanc, a former president of the National Assembly. When Mr. Leblanc refuses to end the meeting, his car is riddled with bullets;

Plaisance (25 November 2001): demonstrators from Convergence démocratique are arrested. One of them, Mr. Sénèque, dies in the police station on 28 November 2001;

St Marc (29 November 2001): gunshots are fired at a march organized by Convergence démocratique, killing two people.

Events of 28 July 2001: storming of the National Police Academy and four police stations

20. Following the political "freeze" in the polarized relationship between the majority and the opposition after the elections on 21 May 2000, agreement on a way out of the crisis was reached on 15 July 2001, thanks in part to the good offices of OAS. On 28 July, at almost exactly the same time - was it sabotage or provocation? - the police stations in Pétion-Ville, Mirebalais, Belladère and Hinche were stormed by armed groups. The culmination was the attack on the National Police Academy, which was occupied for five hours before any action was taken. The OAS commission of inquiry stresses in its report (OEA/Ser.G-CP/INF.4702/02, of 1 July 2002) that it is "incomprehensible that a compound which houses inter alia the special Swat Team as well as the Search and Intervention Brigade could so easily have been overpowered" and that "the assailants left without any officer who went to the Academy having engaged them".

21. According to the Ministry of Justice, the judge in Port-au-Prince, Pierre Josué Agnant, has concluded his investigation and forwarded the file to the government commissioner for further action. The independent expert will not fail to notify the Commission of the action taken in these justified legal proceedings.

Events of 17 December 2001: storming and occupation of the National Palace, home of the Office of the President

22. Pursuant to resolution 806 of the OAS Permanent Council, dated 16 January 2002 (CP/RES.806-1303/02/Corr.2), an independent commission of inquiry submitted a report on 1 July 2002 after investigating these events in situ between 8 April and 17 June 2002.

23. According to this inquiry and the information and testimony gathered by the independent expert, the attack on 17 December 2001 was launched at about 2 a.m. by two heavily armed groups wearing camouflage outfits, who arrived in three vehicles with no number plates, one of which was equipped with an M-50 machine gun. Initially, there was no resistance from the Palace security forces. The assailants were forced to flee only at about 5.30 a.m. Despite a search led by a helicopter, they managed to vanish into thin air, except for one who died and one who was captured. The OAS commission of inquiry concluded that "the political opposition did not participate in the planning or in the execution of the attack on the National Palace", which "could not have taken place without the complicity of some police officers from different units" (above-cited report, chap. III, sect. A, paras. 3.3 and 5.5).

24. On the morning of 17 December, in Port-au-Prince and several other towns, armed groups, some of which explicitly claimed to be popular organizations, used this apparent attempt to oust the President as a pretext for hunting down real or supposed opponents. The headquarters of political organizations and trade unions and the homes of their leaders were targeted in particular. Apart from the destruction by ransacking or fire, the national headquarters of the main opposition political groups in Port-au-Prince - the Organisation du peuple en lutte (whose headquarters also house the offices of Convergence démocratique, which the independent expert visited and found wrecked), Konfederasyon Inite Demokratik, Congrès national des mouvements démocratiques, Mobilisation pour le développement national, Alliance pour la libération et l'avancement d'Haïti and Parti démocratique et chrétien d'Haïti - and the homes of 34 political leaders suffered the same fate, as did the headquarters of a peasants' trade union (Centrale des travailleurs haïtiens) in Jérémie, two schools and two cultural or research centres and one business, making a total of at least 46 cases listed by the OAS commission of inquiry (above-cited report, annex VI).

25. In Gonaïves, the headquarters of the Mouvement chrétien pour une nouvelle Haiti and home of its president, the Reverend Luc Mésadiou, were ransacked and set on fire, while his assistant, R. Durand, was murdered. The independent expert also paid a long visit to the ruins of the Manassé educational complex run by the Reverend Sylvio Dieudonné, who is also vice-president of the Mouvement chrétien pour une nouvelle Haiti. He observed what was left after the destruction, mainly by fire, of most of the school buildings (pre-school and junior high school), a place of worship and the residence of the priest, his brother and five families.

26. Most of these acts of violence were committed on 17 December 2001 in Port-au-Prince, Pétion-Ville, Croix-des-Bouquets, Cap-Haïtien, Les Cayes, Gonaïves, Grande-Rivière-du-Nord, Jacmel, Jérémie and Petit-Goâve.

Events of 2 August 2002: storming of the prison in Gonaïves

27. After breaking down one of the prison walls with a bulldozer, a crowd of demonstrators - many of them armed - occupied the prison, allowing 153 prisoners and convicted criminals to escape. Among the escapees were three notorious "untouchables": former captain Castera Cenafils and Jean Tatoune, both of whom had been sentenced to life imprisonment in the Raboteau massacre trial, and Amiot Métayer, who was implicated in several affairs. This case is a particularly good example of the prevailing impunity.

28. As the law courts in Gonaïves have been completely wrecked and the buildings are completely unusable, the investigating judges stay at home. The government commissioner, meanwhile, received the independent expert - as he does all those under his jurisdiction - in the courtyard outside the court, furnished with a few chairs under a tree, while just a few metres away the "fugitive" Amiot Métayer conducts his public business in what witnesses said were his "headquarters" when the independent expert paid a visit. The fugitive apparently claims that he did not escape, but was kidnapped; the independent expert notes that he has not filed any complaint.

29. Moreover, when the independent expert consulted the court registry - which is remarkably well kept - he noted that: (1) Mr. Métayer's imprisonment was mentioned; (2) his name was not mentioned in the section dealing with decisions on releases; and (3) the name Métayer was not on the list of prisoners present. All an investigating judge would have to do therefore would be to seize these documents to establish that Métayer had committed the offence of escaping from prison and to issue - as is done in such cases in every country - a warrant for his arrest, without having to wait for the hypothetical results of the inquiry into the attack on the prison, which is supposedly a complex task (there is some truth in this, given the number of people involved).

Events in Cité Soleil

30. In a press release dated 29 August 2002, the Inter-American Commission on Human Rights noted the significant escalation in everyday violence, citing as an example the deterioration in the situation in Cité Soleil, in the suburbs of Port-au-Prince. According to information collected by the independent expert, a power struggle between two popular organizations is at the origin of many murders and punitive rapes. At least 200 houses have been destroyed. When the leaders of these armed groups were, paradoxically, received at the Office of the President at the end of February 2002, the victims and their families demonstrated outside the National Palace to demand compensation. Although the identities of the suspected perpetrators or masterminds behind the violence are widely known, no judicial action has yet been taken.

C. Increasing attacks on freedom of the press

31. According to article 28.1 of the Haitian Constitution, "journalists shall freely exercise their profession within the framework of the law" and "such exercise may not be subject to any authorization or censorship", to which the words "de jure or de facto" should be added. While it is true that there is no institutionalized censorship, there is considerable de facto pressure on journalists, particularly on radio journalists, since the press and television barely reach the vast majority of people because of illiteracy and poverty. As serious abuses are tolerated, or even provoked, any critical journalist wishing to avoid persecution - mostly at the hands of those armed groups said to be "arrogant in their impunity" - has no choice other than between self-censorship, exile and death, as shown by the murder of Jean Dominique, of Radio Haïti Inter, on 2 April 2000 and the lynching of Brignol Lindor, of Radio Echo 2000, on 3 December 2001.

32. In the Jean Dominique case, as investigating judge Gassant's mandate expired and was not renewed by the President, the unusual step was taken of replacing him with a team of three judges before he was finally reinstated by the President three months later. Considering that this outrageous procedure had undermined his independence, he eventually gave up and went into exile in the United States. The independent expert met his successor, Judge Saint-Vil, who seems determined to put an end to the impunity that has until now surrounded this crime because it involves a senator who sees himself as "untouchable" even though he has been linked by many sources to a number of atrocities.

33. In the Brignol Lindor case, according to a preliminary report by the Ministry of Justice that was handed to the independent expert, investigating judge Fritzner Duclair heard 33 witnesses and issued five arrest warrants, four of which led to imprisonment. Although the report indicates that the government commissioner has completed his written recommendation and transmitted it to the investigating judge with a view to closing the investigation, it also specifies, paradoxically, that “the Haitian National Police is continuing to search actively for the persons named in the warrants by the investigating judge” (report, para. 4.3.1).

34. The independent expert will keep a particularly close watch on these two cases, given their seriousness and the scope of the principles involved, in the hope that the judges will be actively supported by the relevant authorities in their search for the truth.

35. In a report made public on 17 January 2002, the Haitian Press Federation has drawn up a list which names, in addition to the 2 murdered journalists mentioned above, about 40 journalists who have been either forced into exile (17), physically attacked or shot at (2) or threatened, sometimes with death (20). The following radio stations are concerned: Echo 2000, Caraïbes, Ibo, Métropole, Signal FM, Vision 2000, Belle-Anse, Express, Eben Ezer, Metropoli Sud, Haïti Focus, Iphata, Thiotte, Gonaïves, Tête-à-Tête, Têt-Ansanm, Univ. Plus and Galaxie. About 15 other cases have been recorded by the Haitian Journalists Association since 1 January 2002. The secretary-general of the association has received death threats, according to the report by independent OAS investigators (report, sect. D, para. 3). During the independent expert’s visit, the Quisqueya and Ibo radio stations were forced by threats to suspend their broadcasts.

36. Such are the serious attacks on freedom of the press that are submitted to the Commission for its consideration. They illustrate the extent to which, despite the authorities’ commitments, the prevailing climate of impunity is corrupting Haitian society.

D. Deficiencies observed in the operation of the penal system and their consequences, especially for prolonged pre-trial detention

37. According to the study by the Vera Institute of Justice mentioned in paragraph 8 above, Haiti’s prisons hold “twice as many inmates today as they did in 1995 and nearly 80 per cent of these detainees are awaiting disposition of their cases. Most pre-trial detainees are held from several weeks to several months before release or trial. But for a significant number pre-trial detention extends over years”.

38. In this context, during his visit to Cap-Haïtien, the independent expert looked particularly closely at the way the local penal system operates in relation to the recurrent question of prolonged pre-trial detention. He visited the following in succession: the police station, two magistrates’ courts, the court of first instance, the public prosecutor’s office (in the person of the deputy public prosecutor, who was standing in for the government commissioner) and the prison, where the independent expert saw people who had been detained for over four years without being taken before an investigating judge, in some cases because no judge had yet been appointed, as the independent expert was able to observe from his examination of the court registries, which, he would like to stress, were very well kept. In two other cases, the

independent expert observed that one of the detainees imprisoned for over five years (since 1 August 1997) had barely been heard by the judge, the last time being on 15 February 2002, while another (imprisoned since 19 August 1997) had been heard only once by the judge.

39. The prison governor confirmed that, to his great regret, structural overcrowding had risen considerably (82 per cent of prisoners were in pre-trial detention) as a result of the negligence or absence of certain investigating judges.

40. The Commission will no doubt consider these to be serious failings that would justify at least a visit from the judicial inspection service.

41. Another cause of prison overcrowding observed by the independent expert is the extreme severity of certain sentences, which are disproportionate to the acts (for example, 15 years' imprisonment for stealing three wheelbarrows or life imprisonment for stealing a sack of rice).

42. The situation as far as prolonged detention is concerned is all the more alarming because of the deplorable detention conditions, which add considerably to the punitive nature of detention (dilapidated buildings; the lack of individual cells; overcrowded, badly ventilated and badly lit group cells; the lack of space for a sufficient number of beds, leaving many detainees to sleep on the floor or take turns sleeping in bed). However, it should be noted that minors are separated from adults and those remanded in custody from those who have been convicted.

43. As in many prisons the inadequate security arrangements (the shortage of officers and secure compounds) rule out the use of interior courtyards, detainees are deprived of walks and activities outside their cells. The result is an underlying vitamin deficiency (sunshine is essential for vitamin D synthesis), which has led the prison authorities nationwide to adopt and finance a weekly menu with nutritional supplements that every prison is supposed to budget for as from October 2002. The independent expert will be particularly careful to check that this long overdue measure is implemented.

44. Although it would appear from specific and consistent information collected during the visit that the police too often exceed the 48-hour constitutional limit for police custody, the independent expert did not observe any such irregularities in the police station he visited in Cap-Haïtien, where custody is monitored frequently in situ by the government deputy commissioner, who does a thoroughly professional job.

45. In his future visits, the independent expert thus intends to give high priority to examining the whole of the penal system and its dysfunctions.

E. Players of the future: priority support for a decisive role

46. Speaking to the press at the end of his visit, the independent expert had this to say about those he calls "the just": "In my opinion, the 'just' are essential. They are the prime agents of change. I have met some of them: men and women who are extremely conscientious, make it a point of honour to be good professionals, show courage and do not bend with the slightest gust of wind. In short, they are a credit to their profession."

47. During his visit, the independent expert encountered “the just” not only among judges (judges of the peace, investigating judges, government commissioners), but also in the police and prison services. There are not yet many of them, but, because of their pilot role, they should be encouraged, supported and promoted, not neutralized, as is done all too often. Against a background of such impunity, the fate of the Haitian people surely depends largely on both their judges and civil society. Two examples can be given here, one concerning judges and the other concerning NGOs.

48. As far as the justice system is concerned, three courts have been selected to participate in a pilot project developed in cooperation with UNDP, which was presented by the Prime Minister, in the presence of the independent expert, as “a challenge to injustice, impunity and corruption”. The independent expert, looking beyond speeches and the resources available, believes that this initiative can succeed only if the judges appointed to these courts accept the risks of acting independently and if the police chiefs assigned to them are recognized for their commitment to upholding the law and for their integrity.

49. As far as civil society is concerned, the experience of the Cap-Haïtien legal aid office (set up with the help of the Belgian NGO Réseaux citoyens) can be cited as an example. Since the State could not afford to set up its own legal aid programme, civil society stepped in with initiatives like the legal aid office visited by the independent expert. The office provides both legal aid and training in legal aid, using tests and interviews to recruit students or young graduates from the law faculty. They follow a weekly training course given by experienced lawyers who can also help them prepare the thesis they must produce before they can practise law. These “legal assistants”, who work for a small salary or on a voluntary basis, act on behalf of defendants who have no money and who are put on the list after their income has been carefully checked. The office, which has gradually opened branches in nearby towns, even tries to provide services in the countryside. The office, which is now run entirely by Haitian jurists, does a remarkable job. The Vera Institute of Justice says that it has been “impressed by their efforts” (report, p. 14), a view shared by the independent expert, who held two working meetings with them.

50. This initiative by the players of the future deserves increased assistance within the framework of renewed technical cooperation.

II. TECHNICAL COOPERATION ACTIVITIES: A NEW APPROACH

51. In the light of the above, it would be tempting to consider the results of 10 years of bilateral and multilateral cooperation as derisory, especially given their cost. However well grounded this assessment may be, two comments can be made on it:

The cost of technical cooperation is indeed high, but it should be measured against the large amounts spent by certain States in the past on cooperation whose only purpose was to keep in power for three decades the Duvalier dictatorship that had such a destructive effect on the rule of law and the social fabric;

At the present time, the action of the above-mentioned programmes at a deeper level - over and above any particular conceptual mistakes - has produced a sort of "humus" out of which the future players "spotted" by the independent expert during his conversations have gradually emerged. These players are mostly professionals inspired by MICIVIH and proud of their training, including at the Judicial Training College, but they cannot completely hide their disappointment at being abandoned after the risks they have taken.

52. Before the terms of reference for renewed technical cooperation are defined, there is a need to ask why, despite significant commitments and financial efforts by the international community and despite initially positive results, cooperation is now seen in many ways as a failure.

53. In the independent expert's opinion, which is based on his own observations, the analysis in the final mission report by the OHCHR consultant, the report by the OAS commission of inquiry (para. 20 above) and the study by the Vera Institute of Justice (para. 8 above), the reasons are basically historical and political: since independence in 1804, Haiti has been ruled by a succession of authoritarian and dictatorial regimes and a culture of democracy and human rights has struggled to make any lasting impact on political and social practices. Hence the inadequacy, not to say total lack, of a real "State culture" among many political leaders and top government officials.

54. In the long run, this recurring deficiency may well undermine the very principle of the continuity of the State.

55. This explains the high hopes for an irreversible move towards democracy following the coming to power in 1990, for the first time in the history of Haiti, of a democratically elected president. And indeed, the first post-dictatorship governments did take steps to break with the past (disbanding the army and setting up a civilian police force, an inspection unit and the Office of the Ombudsman) which were rightly seen by the international community as evidence of a process that would not falter.

56. In this period of change, the international community provided effective partnership and undeniably consolidated the process set in motion partly as a result of what NGOs call the "MICIVIH culture".

57. All too quickly, however, historical failings in the State culture produced stagnation and then regression. The first warning came when a de facto government remained in power after the resignation of a prime minister; then came the President's decision to dissolve parliament - again de facto - in January 1999. These decisions were hardly compatible with the stated wish to establish a State governed by the rule of law.

58. Another troubling sign was the growing power of the so-called "popular organizations". In itself, this phenomenon could have helped consolidate the democratization process that was under way by allowing the exercise of local democracy to change people's mentality.

59. However, the popular organizations gradually came to be used for partisan political purposes, including in the violent street demonstrations intended to counter the opposition or to get rid of those out of favour in their own camp, with the result that, having been diverted from their goal, they became parastatal groups. They were often armed and were more often a source of violence than democracy, gradually eluding central authority.

60. In these conditions, one might ask whether the international community should have withdrawn en masse from Haiti in 2000 and 2001 after finding, and not without reason, that, apart from its official statements, the State was not giving sufficient guarantees - in terms of political will - that the process of the democratization was moving forward. Or should an alternative strategy adapted to the new political situation have been considered?

61. Of course, it is always easy with hindsight to define a *modus operandi*, particularly since the lingering effects of cooperation, which may have been limited, but were nonetheless positive, concealed the deterioration in the situation from the international community.

62. Whatever the case may be, one thing needs to be said at this point: insofar as international cooperation helped indirectly to ensure the continuity of the State, its withdrawal en masse (leaving only the "justice" and "prison" elements in the post-MICAH programme launched two years ago by UNDP), together with the overly high turnover of political staff, led the authorities to scrap many reform programmes. To have pursued these, provided that major adjustments were made to suit the new situation, would doubtless have allowed this generation of future players to make a lasting impression; they may be few, but they are active, and they "ferment" the culture of the rule of law that is crucial to any far-reaching process of democratization.

63. It is with this in mind that the independent expert suggests that the following proposals should be taken into consideration:

(a) The joint development by OHCHR, UNDP and OAS of a cooperation strategy that relies more on quality than quantity, and in which priority is given to redressing the balance in favour of:

Professionals who, through their professionalism, respect for the law and independence of mind, give good cause for thinking that they will be players in the future;

Active members of civil society (NGOs, the press, etc.) who, in a transitional period - especially during a crisis - act as a vital opposition force;

(b) As far as the State is concerned, the independent expert proposes that technical cooperation should be maintained, though it is bound to be limited until there are concrete signs that the process of democratization has resumed. This cooperation should be targeted at institutions which, once again, play or ought to be playing a decisive role as agents of change, such as the Judicial Training College, the Police Academy, the inspection and monitoring units, the special office set up in 2001 to sort out the crisis of prolonged detentions, the three pilot courts established recently, the forensic medical laboratory now being set up and, naturally, the Office of the Ombudsman, which needs to regain its credibility;

(c) Ensure that economic, social and cultural rights are taken more into account. During the dictatorship, the defence of civil and political rights was the first priority. The past has left a lasting impression on people, so that the concept of human rights is too often limited in Haiti to civil and political rights. However, as the OHCHR consultant has stressed, the country is the poorest in the western hemisphere and the routine violation of its people's basic rights (the rights to food, education, health and decent housing) is just as important a factor in political instability and the potential for violence as the failure to respect civil and political rights, if not more so. There is thus a need for technical cooperation that also targets NGOs working, for example, to improve the status of women or in the fields of health, the environment and literacy;

(d) Relaunch the fight against impunity by setting up (either in OHCHR or in the Office of the Ombudsman) a watchdog consisting of an equal number of representatives of the State and civil society, whose task would be to keep track of judicial and other actions against impunity, to report on the shortcomings observed and to question the Government about specific cases;

(e) Arms decommissioning is clearly a high priority in combating insecurity. However, as he was not in a position to examine closely, together with the authorities, the arms-decommissioning programme announced by the President, the independent expert will give this important subject priority during his next visit.

III. CONCLUSIONS

64. **The interdependence of civil and political rights and economic, social and cultural rights is an issue at the heart of everyday life in Haiti.**

65. **The greatest violation of the human rights of the vast majority of Haitian people is, as has been stressed, poverty. In addition, the serious, repeated and unpunished violations of civil and political rights that are a source of insecurity, including at the legal level, not only oppress individuals, but also discourage both Haitian and foreign companies from investing in Haiti and even force some of them to leave.**

66. **An indirect consequence of the political situation, particularly the human rights situation, and of the decline in democracy is the continued freeze in international aid.**

67. **The independent expert therefore suggests that the Commission should call on the Haitian Government to take strong initiatives to demonstrate its declared willingness to combat impunity resolutely by helping the judicial system to fulfil its task.**

68. **Unless this willingness is evident, any cooperation - even if it is "renewed" - would lose all credibility.**

69. **Three cases of impunity can be cited as examples of situations that call for strong initiatives against impunity:**

In October 2002, the Minister of Justice admitted that no arrests had been made following the violence committed by popular organizations during the events of 17 December 2001 mentioned above;

The Senate's persistent refusal to lift the parliamentary immunity of Dany Toussaint, in connection with the investigation into the murders of the journalist Jean Dominique and his assistant Jean-Claude Louissaint, gives the impression that there is complicity, either active or passive, at the highest levels of the State;

As things stand, there has been no effective judicial follow-up to the complaints lodged by the secretary-general of the Haitian Journalists Association against two powerful leaders of popular organizations, René Civil and Paul Raymond.

70. In other words, any cooperation programme in the field of human rights should be balanced and should not favour the promotion of rights over the protection and monitoring of the rights that are, in the current context, the top priority because of the ineffectiveness of the Office of the Ombudsman, particularly with regard to the persecution of journalists, political activists and human rights defenders.

71. In the light of the above, the independent expert makes the following recommendations, which should be finalized and implemented after preliminary consultations between OHCHR, UNDP and OAS and then with the Government.

IV. RECOMMENDATIONS

72. The effectiveness of the recommendations depends on the establishment of an OHCHR office. For obvious budgetary and possibly political reasons, it is not a question of setting up a "repeat" of MICIVIH, but of establishing a lean organization consisting of international experts supported by national experts. This initiative is desired by almost all the NGOs, which have felt abandoned since MICIVIH and then MICAH withdrew.

73. The office's role, in relation to the United Nations system, would be to act as the keystone for the renewed technical cooperation described above by making a distinction between its two tasks of promoting human rights, on the one hand, and protection/monitoring, on the other, and by training experts in each of these two areas.

74. With regard to the parties involved in the promotion of human rights, action is proposed in the following areas:

(a) Training

Priority should be given to the Judicial Training College and to the Police Academy and, in cooperation with UNDP where necessary, to the three pilot courts set up recently, which should play a leading role in demonstrating, in situ, that Haiti is capable of setting up a judicial system that enjoys the trust of the people and of the international community;

More generally, and in accordance with the proposal by the OHCHR consultant, whose analysis of this point is shared by the independent expert, lengthy single seminars should be replaced by series of relatively short meetings. Experience

shows that participants' ability to assimilate facts is better over short periods and that, above all, the holding of several sessions one after the other encourages critical reflection between sessions, so that the questions raised initially are dealt with in greater depth;

Short training courses should be organized for political leaders to raise awareness of the interdependence of economic, social and cultural rights and civil and political rights;

A system of grants should be considered that would allow future players - judges, police officers and managerial staff from prisons who stand out for their professionalism - to follow advanced training courses abroad that would consist largely of contacts with colleagues, giving them a chance to compare professional experiences. Candidates should be selected by a panel that includes international experts;

(b) Combating impunity

Establishment of a watchdog attached to either the OHCHR office or the Office of the Ombudsman;

Establishment of the national commission on reparation for the victims of the 1991 coup d'état (the project has been ready for a long time, but the time has come for action);

(c) The Government should be encouraged to give priority in its legislative reforms to the three bills which are provided for by the Constitution and which are technically ready, namely, the bills on the Judicial Training College, the Supreme Council of Justice and the rules governing the judiciary;

(d) In the area of access to justice, including the three pilot courts mentioned above, cooperation programmes at the micro level should, subject to a prior audit accompanied by a development project, enable the role of NGOs such as the legal aid office to be enhanced.

75. For pragmatic reasons (budgetary, political or other constraints), these recommendations are deliberately modest in their ambition in view of the needs, which are enormous, as the OHCHR consultant has observed. They could be implemented gradually. If it is not possible to set up an OHCHR office, perhaps some or all of its tasks could be entrusted to a human rights unit that could be set up within UNDP, which already does excellent work in the area of justice.

76. During his next visit, the independent expert will give priority to an examination of the issue of economic, social and cultural rights, children's rights and women's rights, while continuing to follow closely issues related to the administration of justice, particularly with regard to insecurity, corruption and impunity.



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